ACCOUNTABILITY TO LSC: OUTCOME MEASURES, EVALUATIONS AND UNINTENDED CONSEQUENCES

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INTRODUCTION

The Legal Services Corporation (LSC) is considering how to implement an outcome measures system. Outcomes differ from inputs and outputs. Outcomes are the events, occurrences, or changes in conditions, behavior, or attitudes that indicate progress toward achievement of the mission and objectives of the program. Thus, outcomes are linked to the program's overall mission. Outcomes are not what the program itself did but the consequences of what the program did.[1] LSC is considering several options for such an outcome measurement system. These include:

- A national outcome measurement system that focuses on generic results obtained for clients and applicable to all LSC grantees.
- Assisting grantees or states to develop their own outcome measurement systems.
- Developing a template and tools which grantees use to set goals and measure outcomes.

This paper will argue that LSC should encourage or perhaps even require LSC-funded programs to establish their own outcome measurement systems that are keyed to the outcomes they determine are relevant to their own program management objectives. LSC could also develop templates and tools to assist grantees to set goals and measure outcomes. These approaches, unlike the creation of a national outcome measurement system that focuses on generic results obtained for clients, would be the most likely to improve program quality and performance and the least likely to produce unintended consequences, either externally or internally. In addition, LSC should consider whether a peer review evaluation system that systematically reviews the work of each program over a three to five year cycle, would be an appropriate option to improve quality. And LSC should explore proposals for a system that provides some form of certification or accreditation to show clients, funders, Congress and the public that legal services providers have achieved sufficient quality and effectiveness to be eligible for LSC funding.

BACKGROUND

The LSC Strategic Plan

The current LSC initiative is being undertaken as a result of the LSC Strategic Plan developed in 2000. That plan had two fundamental goals:

1. By 2004, LSC will dramatically increase the provision of legal services to eligible persons.

2. By 2004, LSC will ensure that eligible clients are receiving appropriate and high-quality legal assistance*.*

The programmatic strategies LSC proposed to pursue included *ensuring quality and accountability through programmatic oversight.* Activities designed to implement these strategies included:

- *Developing new information systems that provide more accurate and useful information about the work programs perform which can be used for both evaluation and grants management.*

- *Developing methods that will be used to assess program quality.*

- *Undertaking a series of program evaluation performance pilot projects that are intended to provide 1) an in-depth understanding of the unique issues facing each program; 2) more relevant and accurate reporting to LSC of program activity and resource utilization; 3) performance measures that describe and project program success; 4) information that will lead to an improvement of the overall effectiveness and efficiency of service delivery.*

- *Designing a new management information system to obtain more complete and accurate information about the quality and level of work performed by each grantee and about outcomes achieved for clients.*

- *Developing performance standards that will include criteria that grantees have effective administrative systems in place and that clients receive quality assistance.*

THE LEGAL FRAMEWORK

LSC's Strategic Plan was not the result of any requirement imposed either by Congress or an Executive Order. No member or Committee of the Congress has required or even encouraged LSC to develop outcome measures or performance measures.

The only Congressional mandates affecting outcome measures are found in Sections 1007(a)(1), 1007(a)(3) and 1007(d) of the original LSC Act enacted in 1974.

Section 1007(a) (1) requires the Corporation to:

> "insure the maintenance of the highest quality of service and professional standards, the preservation of the attorney-client relationship, and the protection of the integrity of the adversary process from any impairment in furnishing legal assistance to eligible clients."

Section 1007(a) (3) requires that the Corporation:

> "insure that grants and contracts are made so as to provide the most economical and effective delivery of legal assistance to persons in both urban and rural areas."

The legislative history of §1007(a)(3) indicates that it was intended primarily to ensure that legal assistance was provided to persons in both urban and rural areas and to address the needs of special client groups such as elderly, Native Americans, migrants and others with special needs.[2]

Section 1007(d) provides that the Corporation "shall monitor and evaluate and provide for independent evaluations of programs supported in whole or in part under this title…." While there have been legislative proposals for enhancing the Corporation's responsibility to conduct evaluations of program quality and effectiveness, including the 1992 legislation that passed the House and was voted out of the Senate Committee, no actual change in this provision has been enacted.

The 1996 amendments to the appropriations provisions did not address the issue of evaluations for quality and effectiveness, but focused solely on ensuring compliance with the restrictions imposed by Congress.

Moreover, contrary to what some have suggested, there is no evidence that key members of Congress have questioned whether legal services programs provide high quality representation. No Congressional Committee Report over the last 30 years has indicated that LSC grantees have provided poor quality representation. Not once during the many debates over LSC since 1973 was the charge of poor quality representation a part of the criticism of the program. Indeed, most members of Congress believe that LSC grantees do provide high quality and effective representation. In fact, since 1971, the charges made against LSC by critics focused on the fact that legal services' representation has been extremely effective in providing high quality representation and achieving the results sought by its clients and not on any allegation that legal services representation was not meritorious. Congress has never called upon LSC to address the quality or effectiveness of the representation provided by its grantees. Instead, the repeated concerns of conservatives have focused on reining in the work of legal services advocates to make them less effective and enforcing Congressional restrictions, while those of liberals have focused on reining in the overzealous efforts by LSC to enforce those same restrictions.

On the other hand, as a major funder of civil legal assistance, LSC does have a responsibility to ensure accountability for its funds and quality in the services that are

provided with its funds. Those programs that receive LSC funds should be held accountable for what they do with those funds. As the attached history of LSC evaluations suggests, LSC does not now have in place a system that fully accomplishes these purposes, although it has in the past developed process oriented evaluations. (See Attachment: "History of LSC Efforts to Ensure Quality") The CSR and MSR systems count cases and matters and categorize the substantive work and functional activities, but they do not ensure accountability, nor do they address in any way the quality of the services provided. As LSC itself has pointed out,[3] the CSR system "does not allow LSC and its grantees to objectively track whether we are expanding access and improving performance quality "and it "does not allow for comparisons of grantees in terms of the efficiency and effectiveness of grantees' work for clients." LSC has said that it "cannot objectively identify our strongest programs so that we can understand what makes them 'best' in order to replicate them." Moreover, the on-site visits by LSC's Office of Program Performance staff are not comprehensive evaluations of program quality and performance, and the on-site visits of Office of Compliance and Enforcement personnel focus almost exclusively on program compliance and the efforts that program management must make to insure compliance.

Since there is no Congressional mandate requiring a national outcome measurement system that focuses on generic results obtained for clients, LSC should act with some restraint and should use the least intrusive alternatives to ensure quality and increase access to legal services, the two goals sets out in the LSC Strategic Plan. As I will attempt to demonstrate below, an LSC mandated national outcome measurement system will not increase quality or the quantity of legal services provided by individual LSC grantees and poses some grave risks to the LSC program as a whole. A national outcome measurement system may actually undermine local efforts to use outcome measures to produce substantial benefits, since outcome measures can be a very effective tool for programs to use to manage their programs. LSC should develop an approach that will encourage the development and use of outcome measures tailored to meet the needs of individual programs.

A STEP BACK: WHAT ARE WE TRYING TO ACCOMPLISH

Can LSC and the legal services community take steps to move forward with an agenda for improving program quality and performance? I believe we can. The first step is to examine what it is that LSC and the legal services community are trying to do by developing an outcome measurement system. There are a variety of potential purposes that could be addressed by additional evaluation and reporting systems. But it is helpful to begin with the question: What are we trying to fix?

1. Lack of information

- Does LSC lack knowledge about the quality of program services? Effectiveness of programs? Best practices?
- Do LSC grantees lack knowledge about best practices and what other programs are doing to ensure high quality and effective representation?

2. Quality of representation and service

- Are we trying to ensure that LSC grantees improve their quality of representation and service?
- Are we trying to identify grantees that are not providing high quality representation and effective services and target technical assistance and other efforts to make sure that they do?

3. Management

- Are we trying to improve grantee management so that grantees perform better?
- Are we trying to encourage grantees to manage for results as opposed to managing to provide services?

4. Increased funding

- Are we trying to increase funding for LSC by presenting Congress with information about the results LSC grantees obtain for their clients?
- Are we trying to increase funding by assuring Congress that LSC grantees provide high quality representation and effective services?
- Are we trying to give programs information so they can be more effective at increasing funding on the state and local levels?

5. Change Program Practices

- Are we trying to change how programs operate or what they are trying to achieve with LSC funds, such as their priorities for meeting client needs, their mix of service and impact work, or some other functions?
- Are we trying to improve program priority setting? Staff training? Staff hiring?
- Are we trying to make sure that each program carries out continuing evaluations of their work like a few programs are doing now?
- Are we trying to make sure that programs continually increase access to civil legal assistance?

It is necessary to answer these and similar questions in order to have a thoughtful examination of what LSC should do to improve quality and effectiveness. Moreover, focusing on what we are trying to fix will help LSC and the legal services community examine the appropriate role of an outcome measurement system in achieving the objectives we are trying to accomplish. And it will help sort out the best approaches that LSC should use to meet its objectives.

For example, if LSC is in need of information about the quality and effectiveness of grantee services, it is not at all clear that an outcome measurement system will provide

that information. The results from outcomes are at best a proxy for quality and effectiveness. In order to acquire accurate information regarding program quality, it may be necessary to institute a peer review evaluation system that produces base line data and constantly updated information.

Similarly, a national outcome measurement system is unlikely to help grantees improve their management or encourage them to manage for results. In fact, it is more likely to become simply yet another administrative burden for programs and their staff to shoulder. We have no evidence so far that in the five states using the IOLTA outcome measurement system the grantees are better managed grantees or that the programs have improved their effectiveness or the quality of services provided.

Moreover, in order to determine what outcome measures to include in any national system, LSC would have to decide what it wants civil legal services to do. That is precisely how other agencies develop outcome measures and why a performance measurement system is put in place. But do we really want LSC, or Congress, to make this determination? There is substantial disagreement within the legal services community itself about what a civil legal aid program ought to do, other than provide access to legal services. Among LSC-funded programs there are widely differing priorities, strategies, activities and types of programs. There is no agreement on what the priorities should be or how a legal services program should look or should operate. It is unlikely that LSC, or Congress, could come up with an acceptable formula for what an ideal legal services program should be or do.

There is also a serious risk that LSC would inadvertently substitute its judgment regarding what are appropriate outcomes in each program for the outcomes that result from local priority setting processes that are mandated by Section 1007(a)(2)(C).

Furthermore, as we will discuss below, it is very unlikely that a national broad-based outcome measurement system will lead to increased Congressional appropriations for LSC, and it could well lead to decreased appropriations and further political controversy.

WHAT IS GOING ON OUTSIDE OF LSC

Outside of LSC, efforts have been made to develop four somewhat separate tracks for examining legal services quality and effectiveness: (1) peer review process evaluations conducted by IOLTA programs in a number of states; (2) outcome measurement systems developed and implemented by five IOLTA programs; (3) national evaluations of new delivery methods; and (4) program-owned evaluations that often include some form of outcomes measures and are designed to help individual programs perform better and to better market what they accomplish.

It is important to recognize that LSC is not the only large funder of civil legal assistance, nor are LSC grantees the exclusive providers of civil legal aid in the US. Indeed, in this country, the overall legal aid system is really comprised of three separate and somewhat different systems. One is the network of providers funded by LSC (although most also

receive non-LSC funds as well); the second is a system of state and local legal services providers that are completely funded by non-LSC sources, including IOLTA, government and private funders, and are integrated to some extent with LSC funded providers; and a third is a group of wholly independent entities, completely funded by non-LSC sources, that are not generally integrated with LSC funded providers and may be somewhat isolated from or independent of LSC providers and each other.

1. IOLTA Evaluations

IOLTA is the second largest funder of civil legal assistance providers, including both LSC and non-LSC funded programs. A number of IOLTA funders across the country undertake peer review evaluations of their grantees. Peer review evaluations are done by at least seven states. Michigan, Ohio and Florida bring in out-of-state poverty law experts and managers to evaluate individual programs using on-site reviews. These reviewers use a set of criteria developed in collaboration with the grantees and based, in part, on the LSC Performance Criteria. Massachusetts, New Jersey, Texas and Minnesota use one lead reviewer who visits all of the programs in the state, along with team of reviewers for each individual program. These states also use a set of criteria for evaluation. Virginia does a desk audit using a set of evaluation criteria.

2. IOLTA Outcome Measurement Systems

Five state IOLTA/state funding programs require their grantees to report on outcome measures based on a system originally designed for use in New York. New York, Maryland, Virginia, Texas and Arizona measure specific outcomes that could be achieved for clients which are framed around specific substantive areas, such as housing, and which focus primarily on the immediate result of a particular case or activity (such as “prevented an eviction”). These systems do not capture information on what actually happened to the client. All of these states use the information collected to report to their state legislatures and the public about what the grantees have accomplished with IOLTA and state funding.

For example, the 2002 Report from Virginia includes the number of people who obtained a divorce or annulment, obtained or maintained custody of their kids, obtained federal bankruptcy protection, or obtained a living will or health proxy. It also reported on dollar benefits awarded as a result of the legal assistance, including Social Security/SSI benefits, other Federal benefits, unemployment compensation, child support, etc. The report also estimated the benefits generated by the investment of state funds: “In FY 2001-2002, [Virginia legal aid advocates] won an estimated $23.4 million in direct benefits for their clients, including child support payments, Social Security Disability benefits and workman’s compensation insurance payments. These benefits translate to $12,600 for every $10,000 of total funding received by the programs.”[4] Finally, the report estimates the economic impact on communities from the legal aid efforts, including the amount of federal benefits brought into the state: “Federally-supported benefits and grants brought into local communities by LSCV-funded programs provide income and jobs for working people. By applying a standard

economic activity multiplier of 1.64 (obtained from U.S. Department of Commerce 'Regional Economic Multiplier' studies), we can produce a reliable estimate of $25.8 million in new economic activity and 647 jobs resulting from these benefits and grants."[5] The other 4 states using this approach have a similar format for reporting.

3. Evaluations of New Delivery Techniques

There has been one national evaluation of new delivery techniques, a study of hotlines that has just been completed by the Project for the Future of Equal Justice (the Project), a joint project of the Center for Law & Social Policy (CLASP) and the National Legal Aid and Defender Association (NLADA). [6] The Project undertook the study of the effectiveness of centralized telephone legal advice, brief service, and referral systems in the delivery of civil legal assistance.[7] The study used existing data to compare "before" and "after" caseload statistics in programs that had adopted a hotline system and to determine the effect of the hotline system on the number of clients served and the levels of brief and extended services. It also conducted a full-scale survey of hotline clients to answer a variety of questions about the different legal outcomes and the characteristics of clients who experience successful and unsuccessful results.[8]

What is most instructive about the hotlines study, and what made it so useful, was that it was designed to address carefully identified evaluation questions, and the outcome measurements were tailored to the specific needs of the evaluation. Thus, it was possible to conduct a well thought out national outcome evaluation that was tailored to answer important national questions about what is working in the delivery system. However, a generic, across-the-board outcomes data collection scheme is not likely to be structured to serve such specific purposes.

4. Program-Owned Evaluations

Finally, a number of programs across the country are utilizing what is now called "program-owned evaluation" to ensure high quality and effective representation. There have been a number of developments in the expansion of program-owned evaluation in the past few years. First, on their own some programs have developed rigorous internal evaluation systems, including the use of outcome measurements, to evaluate whether they are accomplishing what they set out to do for their clients. Among those that have engaged in such efforts are the Legal Aid Society of Greater Cincinnati, Neighborhood Legal Services in Lynn and Lawrence, Massachusetts, Legal Counsel for the Elderly in Washington, DC and the Hale and Dorr Clinic at Harvard, which is co-sponsoring this event.[9] Many other programs have begun to use the techniques developed elsewhere as a part of their own program-owned evaluation.

What characterizes all of these diverse efforts is that they are keyed to answering the same overall question for each program, i.e., whether its efforts have succeeded in accomplishing for clients what it intended. They are explicitly outcome-based, and the outcomes are carefully and strategically chosen by each program to guide its work. The programs have used a variety of creative techniques to conduct their outcome

evaluations, including focus groups, client follow-up interviews, interviews of court and social service agency personnel, courtroom observation and court case file review.

Two developments have encouraged the expansion of program-owned evaluation, including the rigorous use of outcome measures. In California, the Legal Services Trust Fund, which is State IOLTA funder, and the Administrative Office of the Courts (AOC) have teamed up to support the development of a "tool kit" of program self evaluation tools for use by programs as a part of the statewide system of evaluation. The use of the specific tools is optional for programs. The tools include end-of-service surveys, client follow-up interviews, focus groups, courtroom observations, review of documents filed in court, interviews of court and agency personnel, and outcome measures. The state level agencies decided that the use of the tools should be optional as a way to encourage programs to make use of those that they would find useful for their own management purposes. Hence, the name "program-owned evaluation." The reports from the program-owned evaluations will be provided to the state agencies to help them fulfill their obligations to report to the State Legislature, but the Trust Fund and the AOC both see the primary beneficiaries of the tool kit to be the programs that embrace its use.

A similar development in the past year has been the Management Information Exchange's (MIE) Technology Evaluation Project (TEP). TEP was funded by the Legal Services Corporation through a Technology Initiative Grants (TIG) grant made jointly to the Legal Aid Society of Greater Cincinnati and MIE to develop tools for the evaluation of technology initiatives. The resulting product is a set of tools–also referred to as a "tool kit"–that is available for programs to use to evaluate their websites and their use of video conferencing and legal work stations that serve clients through "virtual law offices." The range of tools includes those mentioned previously with the addition of a number of surveys and a set of checklists to test website navigability, quality control and outreach.

Each of these developments is tied by a common thread. They are part of a growing movement by programs to embrace evaluation as a key component of effective management. Programs are undertaking evaluations to meet their needs for improving their own performance and to tell their story better to funders and to the public. These outcome evaluations have grown up spontaneously in the legal services community in response to recognized management need: managers have an interest in knowing if the work of their programs is having the desired outcomes and producing real benefits for the client community.

OUTCOME MEASURES IN LEGAL SERVICES

The term "outcome measures" is used in a number of different ways within the legal services community. The five IOLTA states use the term to define specific outcomes such as whether the representation prevented or delayed an eviction, providing the client with time to seek alternative housing. But these outcomes may not tell much about what ultimately happened to the client. They tell us that the representation

stopped or delayed an eviction but not whether the client actually remained in the home or apartment or found adequate alternative housing after the case was over.

Therefore, some program managers have suggested that an outcome measurement system must look at outcomes over time, such as whether a tenant was able to remain stably housed at least one year after resolution of the eviction. Of course, to determine what happened over time requires programs to set up a system for following clients after the representation is completed. A number of programs have started to do this with very good results.

There are, of course, other outcome measurement systems, including those used by some programs with United Way funding. Some of these systems do not capture information about outcomes for a particular client, but focus more on program-wide outputs and obtain more general information about what the program is doing, such as "provided access to legal services for 1000 individuals" or "served 100 individuals faced with an eviction" or "helped 100 victims of domestic violence obtain a restraining order".

In addition, there are systems in place in some programs to measure whether the program accomplished very specific objectives. For example, one program may set out specific objectives such as reducing or eliminating barriers that families encounter in making the transition from public assistance to employment. The program would then describe the changes it is trying to achieve to meet this objective, such as allowing welfare recipients keep more of their earnings, obtain increased child care for individuals in job training and entry-level employment, or increased transportation resources for working families with children.. These systems focus on what a program will do to ensure that these changes occur and then set out indicators to determine whether the program has achieved the objectives, such as whether it achieved certain specified public policy changes, provided transportation opportunities to 200 families, etc. This type of evaluation uses these very specific and individualized outcome measures in order to effectively manage for results.

I have described four very different approaches that require four very different systems to carry them out. A number of difficult questions are raised by examining these and other outcome measurement systems that are in use in civil legal aid today or that have been proposed for the future. A major question is what is a reasonable outcome? Is it enough that the program obtained a court order or settlement, or must the client actually benefit concretely from the order? Is it sufficient to give the client legal advice and representation on an eviction, or must it actually result in the client being able to stay in his or her apartment for a specified period of time?

A second question is whether an outcome measurement system should be an integral part of the management of the program? If so, then the system would have to be fully integrated into the priorities of the program, including such priorities as reducing or eliminating barriers for families as they transition from public assistance to employment. These systems are designed to encourage program managers to incorporate an outcomes approach into their approach to management. But in order to work, the

desired outcomes have to be determined by the managers. The system and the outcomes cannot be imposed from outside if it is to serve an effective management purpose.

UNINTENDED CONSEQUENCES

One of the options that LSC is considering would be the development and implementation of a national outcome measurement system that would be applicable to all LSC grantees. A national outcome measurement system that focuses on generic results obtained for clients could have unintended consequences that would result in significant negative costs for LSC and its grantees. Such consequences could range from decreased funding for LSC, to an effort by Congress to impose specific outcomes that LSC would then be required to measure. In addition, a national outcome measurement system could stifle creative local program efforts to develop ways to use outcome measures to improve program management and to increase program quality and effectiveness. Moreover, any national system of outcome measurement administered by LSC will inevitably result in the imposition of very detailed and time-consuming record-keeping and documentation requirements that LSC will feel compelled to impose in order to ensure that the data is "accurate."

INTERNAL CONSEQUENCES

Discouraging the Strategic Use of Program Outcome Measures by Programs

As noted above, a number of legal services programs are now using their own program-owned evaluation as an integral part of their program management in order to carry out locally determined strategic goals. The outcome measures they have developed focus on the particular goals and strategies that the program is pursuing, and they differ widely from program to program. It is very unlikely that any national outcome measurement system could incorporate the wide range of approaches that individual programs are now using. Instead, a national system would more likely be similar to the state IOLTA systems that are broad based and collect information on narrowly defined outcomes in specific substantive areas. The fundamental problem with these systems is that they address generic outcomes and are not tailored to the particular outcomes that programs decide are strategically important to carry out their mission. Moreover, were LSC to impose a national outcome measurement system, it would very likely discourage many LSC grantees from developing their own systems to address their strategic needs, because they would not want to have two different systems in place. Indeed, a national outcome measurement system might well stop these promising developments from moving forward at all.

A national system would also discourage innovation and experimentation with new strategies and new programmatic directions. Many programs will inevitably decide that what they need to do is to "teach to the test," i.e., tailor their work and program priorities to produce the results valued by LSC as part of the national system. They would be much less likely to develop new priorities or respond to new issues that are not captured

by the national outcome measures that either LSC or Congress has imposed. As the history of the LSC Case Service Report (CSR) system, described below, amply demonstrates, once in place, a national outcome measurement system will be slow to change or to adapt to changing client needs. And once a program has trained its staff and developed the necessary case management system to implement a national outcome measurement system, there will be little incentive to work outside of the box.

In addition, requiring all legal services programs to operate a uniform system of collecting information on certain outcomes will inevitably lead the various case management contractors that now provide most case management software to legal services providers to devise ways to ensure that there are simple methods for program staff to implement the national information collection requirements. Legal services programs will routinize the collection of data and report it to LSC, but, like CSR data, it is likely that they will not use the data to improve program management or increase program quality.

COSTLY, TIME-CONSUMINMG AND NON-BENEFICIAL VERIFICATION AND VALIDATION REQUIREMENTS

Any national system of outcome measurement administered by LSC will inevitably result in the imposition of very detailed and time-consuming record-keeping and documentation requirements that LSC will feel compelled to impose in order to ensure that the data is "accurate." To prove to Congress and to its critics that recipients of LSC funds are actually doing what they claim, LSC will require grantees to go to great lengths to document that the specified outcomes have actually occurred.

The history of the LSC Case Service Reporting (CSR) system illustrates this problem very well. Until 1998, LSC made no systematic effort to verify the accuracy of the CSR data that programs had submitted. In 1998, the LSC Office of Inspector General (OIG) began to question the accuracy of the CSR data that recipients had been reporting to LSC and undertook a series of special audits of recipient's case management systems to test the accuracy of CSR reports for prior years. The OIG maintained that its audits showed recipients were claiming large numbers of cases that either were not, in fact, cases or that were inadequately documented, resulting in significant over counting of cases in the CSRs. In response, LSC initiated a self-inspection process that required recipients to review their CSRs and to certify the extent of errors that they found in the reported data. In 1999, at the request of a Congressional Committee, the Government Accounting Office (GAO) began a series of audits of five of the largest LSC programs to ascertain whether these programs were also misreporting data and to determine what could be done to ensure that data would be accurately reported in the future. GAO made a number of findings and suggested, among other things, that LSC give programs more direction on how to document cases.

Since 1999, LSC has embarked on an elaborate and resource intensive effort to ensure that the case closure data submitted by its grantees is fully documented, so that LSC can tell Congress that the reports are "accurate," i.e. that each reported case has had

every “t” crossed and “i” dotted. It has forced programs to use large amounts of extremely scarce resources—resources that could have gone to serve more clients or to develop their own program-owned evaluation systems--to eliminate from their annual CSR reports many thousand of cases, not because the work was not actually done, nor because the clients were ineligible for LSC services, nor because the LSC restrictions precluded the use of LSC funds to support the services. Instead, these cases were excluded simply because they lacked some element of documentation that LSC had determined was required in order for a case to be included within the CSRs.

While it may be true that this effort by LSC has produced CSR reports whose “accuracy” is unassailable, this result has been achieved at great cost to LSC and its grantees, and by implication, to the client community served by those programs. Each year program staff spend innumerable hours and exhaust enormous resources in reviewing case files, meeting with LSC compliance teams and redesigning systems to ensure that each reported case complies with every last detail of the CSR Handbook. And while the resulting CSR reports may include all of the fully documented cases closed by LSC recipients, they vastly understate the real number of LSC-funded cases actually completed by programs that could not be reported because the case files did not include some small bit of information deemed critical by LSC.

One danger, amply exhibited by the CSR experience, is that in order to justify programs’ assertions that specified outcomes have been achieved for their clients, LSC will be forced to expend large amounts of its own resources to develop detailed record-keeping systems and procedures that will, in turn, necessitate recipients to expend even greater amounts of their limited resources in order to comply with the requirements that have been imposed. For almost 20 years, LSC did not believe it had to set up an elaborate system to verify CSR data, absent an indication that a program was deliberately falsifying data. But the lesson of recent years is that Congress expects verification.

Thus, for example, not only will programs be required to count the number of cases where a client obtained or maintained custody of her children or where the program averted a public housing eviction, outcomes now measured by several IOLTA programs, but LSC would be forced to require a program to maintain specific documentation in each individual case file to support that the outcome was achieved. Self-inspections, compliance visits, record-keeping and other mechanisms would likely be put into place in order to justify the numbers that are reported. As has been true with CSR documentation, these mechanisms would place enormous administrative burdens on LSC recipients already overburdened with record-keeping requirements imposed by LSC and other funders.

A second danger is that LSC will not make a concomitant expenditure of its time and resources to determine what kind and what level of documentation is really necessary to validate the outcomes claimed, whether the documentation that LSC is requiring actually measures the specified outcome or, perhaps most importantly, whether the outcome that is being measured truly benefits either individual clients or the low-income community in general. Thus, would LSC invest resources to determine whether it is

necessary for every case file to contain a copy of a letter from counsel for the local housing authority to prove that the authority has agreed to suspend an eviction proceeding? Does a court order awarding custody really measure the outcome for the client if the non-custodial parent refuses to turn over the children to the client? And is it clear that resolving a credit reporting error benefits the client when she is unable to purchase a home because all of the available housing stock is out of her price range?

EXTERNAL CONSEQUENCES

Adverse Consequences in Congress

Implementing a nation-wide, generic outcome measurement system that highlights results and reporting such results to Congress may well undercut the Congressional support for LSC that has developed since 1996. The current Congressional compromise, fragile as it is, is premised on LSC funding grantees that help achieve access to civil legal assistance for individual low-income persons by delivering non-controversial core or basic legal services. John McKay, former President of LSC, summed it up well: "Taken as a whole, the restrictions on the types of cases LSC programs are allowed to handle convey a strong Congressional message: federally funded legal services should focus on individual case representation by providing access to the justice system on a case-by-case basis."[10] The Congressional majority does not believe that social justice should be the goal of the legal services program or that it should focus on an anti-poverty agenda. As Mauricio Vivero recently wrote: "LSC is not an institution created to 'address the causes' of poverty. Rather, the authorizing legislation and subsequent Congressional mandate of 1996 directed LSC to focus on providing legal assistance to help solve the basic legal problems of the poor, not to end poverty."[11]

Unless an outcome measurement system is limited solely to measuring access to legal services, there is a genuine concern that reporting on outcomes for clients will suggest to Congress that LSC grantees are engaging in anti-poverty or social justice reform efforts. The IOLTA systems include several outcome measures that could well be considered to be controversial or contrary to the interests or values of some members of Congress who have long been critics of legal services. These include the following outcomes: obtained, preserved or increased public assistance, TANF or other welfare benefit/right; overcame illegal or unfair application of welfare work requirements; obtained, preserved or increased SSI benefit/right; obtained release from INS custody; immigrant obtained employment authorization or obtained/replaced Green Card; obtained or preserved rights of institutionalized persons; obtained, preserved or increased access to public facilities/accommodations; obtained benefits of emancipation; avoided or delayed suspension from school. Reporting on these outcomes could lead LSC critics to argue that LSC was encouraging its grantees to engage in anti-poverty or social justice activities to obtain TANF, avoid work requirements, help illegal aliens get green cards, help juveniles become emancipated, prevented schools from suspending disruptive students, and the like.

Moreover, there are additional political risks in a national system for LSC recipients. The Legal Services Corporation of Virginia report to the legislature states that legal aid advocacy produces millions of dollars in benefits for low income Virginians. This figure is based on the reports of SSI, Social Security Disability and other benefits awarded to clients in Virginia as a result of legal services advocacy. While this may make a good case to support state funding for legal services programs in Virginia, since as a result of their efforts, federal funds flowed into the state, members of Congress might not be as sanguine about these results on the national level, since they result in added costs to the federal government. Some of the harshest critics of LSC claim that one of LSC's major problems is that advocacy by LSC funded programs increases federal expenditures for social welfare programs and discourages the poor from moving toward self-sufficiency.

Critics of legal services have long sought to reduce or eliminate funding for LSC and its recipients. Outcome measures that trumpet the effectiveness of legal services in achieving results for poor clients that are perceived as anti-work, pro-immigrant, anti-business, anti-family, costly to the federal fisc or otherwise, could provide ammunition to critics of legal services and could fuel efforts to eliminate the legal services program entirely.

Imposition by Congress of its own Outcome Measures for LSC

The other concern is that by embarking on the development of a system of outcome measures, LSC could increase the likelihood that Congress would attempt to impose its own view of appropriate outcome measures on LSC. These efforts would likely be driven by the prevalent view in Congress that LSC is intended to be a program to provide access to individuals for assistance on non-controversial, basic or core legal problems. While it is impossible to speculate with any degree of accuracy about what might emerge from an appropriations or reauthorization process, it would not be surprising to see outcome measures imposed by Congress that focused solely on increasing the number of individuals who are provided some kind of assistance and/or limiting specifying the types of cases or matters on which LSC grantees could provide services.[12]

APPROACHES TO CONSIDER

LSC should encourage or perhaps even require LSC-funded programs to establish their own outcome measurement systems that are keyed to the outcomes the programs themselves have determined are relevant to their own program management objectives. LSC could also develop templates and tools to assist grantees to set goals and measure outcomes. These approaches, unlike the creation of a national outcome measurement system that focuses on generic results obtained for clients, would be the least likely to produce unintended consequences, either externally or internally.

This approach best fits within our highly decentralized civil legal aid system that requires each program to set its own priorities. It would also provide sufficient flexibility for programs to meet the requirements of other funders, such as IOLTA or United Way. Perhaps most important, this approach would be the most likely to improve program performance. It would encourage programs to be deliberate about what they are trying to achieve and to develop systems to measure whether they are achieving what they set out to do. It would foster the "program-owned evaluation" approach that looks to be the most successful approach yet developed. It would also encourage innovation and experimentation. This approach would give LSC, IOLTA and other funders information about what the programs are doing and how well they are doing it. And it would provide LSC with a laboratory to learn what works and does not work to improve program quality and effectiveness.

Nevertheless, we should not be limited by the options that LSC has put on the table. We should also explore other steps that LSC could take to improve program performance, increase quality of services and enhance program effectiveness. Among other approaches, we should consider whether a peer review evaluation system that systematically reviews the work of each program over a three to five year cycle, would be an appropriate option. If so, what should that system attempt to evaluate and how should it do it? Should peer reviewers look at case files, within appropriate ethical constraints? Should they follow-up with clients through interviews to learn about both the services provided and the actual results achieved for those clients?

In addition, we should explore proposals for a system that provides some form of certification or accreditation to show clients, funders, Congress and the public that legal services providers have achieved sufficient quality and effectiveness to be eligible for LSC funding. Higher education has long used use some form of accreditation to determine whether schools meet critical educational standards, such as the ABA process for accreditation of law schools. Recently, England and Wales have begun using an accreditation approach with the Quality Mark system that certifies various types of providers for various levels of legal assistance activity. Providers are certified to provide information services, general help services (advice and brief service) and specialist help services (full range of legal representation). The Quality Mark has three essential elements: the specification of standards for quality assurance; audits by the Legal Services Commission; and continuous improvement in the service offered by providers of legal services to their client. [13]

CONCLUSION

LSC should ensure accountability for its funds and quality in the services that are provided with its funds. The programs that receive LSC funds should be held accountable for what they do with those funds. Clearly, LSC does not now have in place a system that fully accomplishes these purposes. It is time for LSC to ensure that such a system becomes a reality.

This paper has argued that LSC should encourage or perhaps even require that LSC-funded programs establish their own outcome measurement systems that are keyed to the outcomes they determine are relevant to their own program management objectives. LSC could also develop templates and tools to assist grantees to set goals and measure outcomes. In addition, LSC should consider whether a peer review evaluation system that systematically reviews the work of each program over a three to five year cycle, would be an appropriate option And LSC should explore proposals for a system that provides some form of certification or accreditation to show clients, funders, Congress and the public that legal services providers have achieved sufficient quality and effectiveness to be eligible for LSC funding.

These approaches, unlike the creation of a national outcome measurement system that focuses on generic results obtained for clients, would be the least likely to produce unintended consequences, either externally or internally. A national outcome measurement system that focuses on generic results obtained for clients could have unintended consequences that would result in significant negative costs for LSC and its grantees. Such consequences could range from decreased funding for LSC to an effort by Congress to impose specific outcomes that LSC would be required to measure. In addition, a national outcome measurement system could stifle creative local program efforts to develop ways to use outcome measures to improve program management and to increase program quality and effectiveness. Moreover, any national system of outcome measurement administered by LSC will inevitably result in the imposition of very detailed and time-consuming record-keeping and documentation requirements that LSC will feel compelled to impose in order to ensure that the data is "accurate."

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[1] This definition is taken from Hatry, H. (1999) **Performance Measurement: Getting Results**, Urban Institute Press, p. 15.
[2] See Statement of Managers of the Committee of Conference (H.R. 93-1039 and S. 93-845, 93rd Cong. 2nd Sess.) at page 24
[3] See 87 Fed. Reg. 53977 (August 20, 2002)
[4] 2001-2002, Annual Report, Legal Services Corporation of Virginia, p. 9.
[5] Ibid., p. 13.
[6] The complete Hotline Outcomes Assessment Study can be downloaded from the websites of NLADA (www.nlada.org, click on Civil Resources and Project for the Future of Equal Justice, or go directly to www.nlada.org/Civil/Civil_EJN) and CLASP (www.clasp.org, under publications). The Study was conducted by an independent research firm, the Center for Policy Research, located in Denver, Colorado. It was commissioned by the Project for the Future of Equal Justice and funded by the Open Society Institute.
[7] Other hotline evaluations are underway in Florida.
[8] The study concluded that hotlines can be effective. Advice and brief service can be increased without reducing capacity to provide extended services and can expand a program's overall capacity, productivity and accessibility, but the study also found that success is not guaranteed. The outcome results showed that hotlines work well for some clients, enabling them to handle their legal problems to their satisfaction. However, for an equally large group of clients, the results showed that hotlines are not effective, at least as they currently operate.
[9] The integration of program owned evaluation into the regular operation of these programs is the subject of a series of case studies that will be published by AARP and NLADA in the near future.
[10] John McKay, "Federally Funded Legal Services: A New Vision of Equal Justice Under Law," 68 Tenn. L. Rev. 101 at 109-112 (Fall, 2000).

[11] Mauricio Vivero, "From 'Renegade' Agency to Institution of Justice: The transformation of Legal Services Corporation," Fordham Urban Law Journal, Vol. XXIX, February 2002 at p1343. These themes are further developed in the recent article in the LSC **Equal Justice Magazine, "Just Right"** that provides a useful overview of where the Congress and President stand on LSC.

[12] Limiting the types of cases that can be funded is not an overstatement or exaggeration. In 1995, the House Judiciary Committee adopted a bill which limited the types of cases that could be funded with LSC and non-LSC funds. See The Legal Aid Act of 1995, H.R. 2777, 104th Cong. (1995).

[13] I am not suggesting that we adopt wholesale the Quality Mark approach of the Legal Services Commission for the legal aid systems of England and Wales. There are far different systems from our system in a number of fundamental ways. For example, the system in England and Wales is primarily private attorney judicare program, is based on national priorities set by the Commission, separates out for delivery and funding various levels of legal assistance and representation, is much higher funded and the like.